APPENDIX A

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 6070

ASSOCIATED TRUCK LINES, INC., AMERICAN TRUCKING ASSOCIATIONS, INC., and REGULAR COMMON CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

and

NATIONAL FURNITURE TRAFFIC CONFERENCE INC.,

Intervening Defendant.

Before: MCCREE, Circuit Judge; KENT, Chief District Judge, and FOX, District Judge.

Over a period of many years, Associated Truck Lines, Inc., plaintiff in this case, has had agreements with other carriers for through routes and joint rates for the carrying of general commodities, including furniture, between the Central States area and the Southern States area.[1]

[1] Pursuant to 49 USCA § 316(c).

In 1965, Associated published tariff restrictions and a cancellation of the line rate schedule on shipments of furniture. Shippers would then have been charged the higher combination of local rates on through routes. The Commission, after consideration, found the higher combination rates were not just or reasonable. No appeal was taken to the courts from the Commission's finding.[2]

Thereafter in 1966, Associated cancelled all through routes and joint tariff arrangements on shipments of furniture between the Central States territory and the Southern States territory.

Intervening defendant, National Furniture Traffic Conference, filed a complaint with the Interstate Commerce Commission challenging the validity of this cancellation. The Hearing Examiner found that the cancellation was not unlawful and recommended that the complaint be dismissed. This recommendation was followed by the Commission, Review Board No. 4, and the Commission, Division 2, acting as an appellate division. A petition for reconsideration by the Commission was denied, however, and a second petition for reconsideration (based on the ground that the issue involved was one of general transportation importance) was granted. The full Commission reversed the Examiner and the Review Board. It found the cancellation was unlawful and thereby restored the through route-joint rate arrangement for shipments of furniture.[3]

The complainant before the Interstate Commerce Commission (National Furniture Traffic Conference, Inc.) maintained before the Commission and before this court that once a motor common carrier of general commodi-

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[2] Docket No. M-19650, Furniture Restrictions Between Central and Southern States (not printed), decided September 20, 1965.

[3] Docket No. 34815, National Furniture Traffic Conference v. Associated Truck Lines, Inc. December 31, 1968.

ties elects to establish through routes, that carrier is obligated under its certificate of public convenience and necessity to transport all commodities over those routes until the through routes are closed to all commodities.

The plaintiff, Associated, maintains that having *voluntarily* entered into the agreements for through routes and joint rates, it can cancel such agreements under the provisions of Section 216(c), 49 USCA § 316(c), as to some commodities, and still maintain through routes and joint rates as to other commodities in the same territory.

Although we were urged by the National Furniture Traffic Conference to find that a carrier might not withdraw joint through rates for general commodities once it has voluntarily established joint through rates for general commodities, we find it unnecessary to decide that issue because the Commission found that Associated's selective cancellation here clearly placed furniture shippers in a disadvantaged position relative to other general commodities, and found such disadvantage to be undue and unreasonable, and hence unlawful under Section 216(b), (c) and (d). American Trucking Association v. A.T. & S.F. R. Co., 18 L.Ed.2d 847, 863 (1967); Greyhound Lines, Inc. v. U.S., 268 F.Supp 746 (ND. Ill. E.D. 1967); Crescent Liquor Co. v. Platt, 148 Fed. 894, 900-902 (N.D. W.Va. 1906).

The Commission found that this selective cancellation of the through routes and joint rates would not only require a furniture shipper "to pay a combination of two local rates (rather than a lower single-factor rate), but would also . . . put [the shipper] to the expense (and subject to the attendant delay) of arranging to have a warehouseman or other person at the point of interchange act as his agent in accepting the shipment from Associated and forwarding it on a new bill of lading." 332 ICC 808, 809.

Furthermore, the Commission found that routing shipments and processing damage claims would be further complicated. 332 ICC 812.

The total effect of this action, in many situations, will be to restrict the movement of furniture to those territories where single line service is available. The segmented and regionalized transportation system which will develop from this tariff rule thus permits Associated selectively to encourage only that traffic which Associated believes more desirable and lucrative.

The Commission then found that such a selective tariff will prejudice furniture shippers relative to other general commodity shippers and was contrary to Associated's duty to observe reasonable practices and its duty not to put any shipper at an undue and unreasonable disadvantage.

In a concurring opinion, Commissioner Tuggle found that Associated's action was unduly discriminatory because it gave an unreasonable economic advantage to furniture shippers who required only Associated's single-line service to reach a market. Those shippers still receive this service, while those shippers who had used Associated's interline service to market their goods were faced with higher costs and added shipping complications. The result of this practice would be to force the latter shippers out of the market, thus benefitting their single-line competitors. Furthermore, this tariff rule would prejudice shippers between Southern and Central territories, who no longer have Associated's interline service available, "whenever they compete at points with shippers from other territories who need [Associated's] interline service and have it available." 332 ICC 815, 816. Thus, this tariff rule's failure to provide equal treatment to competing traffic required the finding that this tariff was unlawful.

From an examination of the record we find substantial evidence, considering the record as a whole, to support this finding of the Commission.

The determination of the Commission is hereby affirmed.

Certified as a True Copy:

Howard T. Ziel, Clerk,/

By /s/ G. E. Larink
Deputy Clerk

Sep 28 1969

APPENDIX B

INTERSTATE COMMERCE COMMISSION

No. 34815

NATIONAL FURNITURE TRAFFIC CONFERENCE, INC.

v.

ASSOCIATED TRUCK LINES, INC.

Decided December 31, 1968

On reconsideration, assailed tariff rule providing that defendant maintains no through routes, joint rates, or interchange arrangements on shipments of furniture found to be unlawful. Unlawfulness required to be removed.

John F. Bohman for complainant.

Elmer J. Maue for defendant.

REPORT AND ORDER OF THE COMMISSION ON RECONSIDERATION

MURPHY, *Commissioner:*

The defendant, Associated Truck Lines, Inc. (Associated), is a motor common carrier of general commodi-

ties conducting operations in interstate and foreign commerce pursuant to certificate No. MC-69833 and subs thereto. Through its publishing agent, the Central & Southern Motor Freight Tariff Association, Inc., it has caused to be published the following restrictive tariff provision applicable on movements of furniture between central States territory and the South:

> Associated Truck Lines, Inc., maintains no through routes, joint rates, or interchange arrangements on shipments of furniture as described in items 79000 through 83650 in NMFC.[1]

Complainant, the National Furniture Traffic Conference (Conference), is a voluntary association of manufacturers, wholesalers, and retailers of furniture. By complaint filed February 5, 1967, it alleges that the quoted tariff provision violates sections 212(a) and 216 (b), (c), and (d) of the Interstate Commerce Act and it requests this Commission to order the cancellation of this provision so as to restore through routes and joint rates on shipments of furniture between the affected territories.

The modified procedure was followed, and by decision and order, dated October 10, 1967, Review Board No. 4 affirmed and adopted with modification the examiner's report and recommended order which found that the assailed tariff provision had not been shown to be unlawful, and dismissed the complaint. Division 2, Acting as an Appellate Division, by order dated January 17, 1968, denied the Conference's petition for reconsideration. Subsequently, by order dated February 19, 1968, this proceeding was designated by us as one involving an issue

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[1] This tariff provision became effective July 2, 1966, and was contained in paragraph (b) of item 545-K in Central & Southern class tariff supplement 95 to tariff 100-D, MF-ICC 287. This is a reissue of an item which first became effective May 1, 1966. There has since been another reissuance as more fully explained in the appendix hereto.

of general transportation importance. Pursuant thereto, a petition for reconsideration was filed by the Conference. Associated replied, and by order dated June 11, 1968, the proceeding was reopened for reconsideration on the present record.

We reopened this proceeding to consider whether a motor common carrier of general commodities may lawfully refuse to participate in through routes, joint rates, and interchange agreements with respect to some authorized commodities and, at the same time, hold itself out to provide such service with respect to other authorized commodities.

BACKGROUND

The assailed tariff rule was published on behalf of Associated primarily on the asserted grounds that the transportation of furniture over its authorized routes, pursuant to through routes, joint rates, and interchange agreements with other common carriers, could not be rendered at a compensatory level, because of the transportation characteristics of furniture. Prior to the publication of the tariff item now under consideration, Associated caused to be published schedules providing for the nonapplication of joint-class rates on shipments of furniture between points in central and southern territories. This latter publication was considered in Investigation and Suspension Docket No. M-19650, *Furniture Restrictions Between Central and Southern States* (not printed), decided September 20, 1965, wherein it was found that the higher combination rates resulting from this proposed cancellation of joint-class rates were not shown to be just and reasonable. The schedules were ordered canceled. Subsequently, Associated caused to be published the present tariff rule canceling its participation in all through routes, joint rates, or interchange agreements on shipments of furniture.

Associated maintains that furniture, generally, has "three undesirable traits from a transportation point of view." It avers that furniture is light and bulky, easily susceptible to damage, and is difficult to stow and transport in the same vehicle with other general commodities. It states that a "spot check" indicates that approximately 75 percent of its furniture shipments weigh less than 5 pounds per cubic foot and approximately 35 percent weight less than 3 pounds per cubic foot. It further states that the average shipment of furniture weighs less than 200 pounds. Damage claims on furniture are high, and it requires special care. For the above reasons Associated claims that the revenue it receives from transporting furniture in joint-line service is insufficient to warrant its participation in such movements.

Shippers of furniture are, to a large extent, dependent upon motor carrier service. There are nearly 4,000 separate categories of furniture listed in the National Motor Freight Classification A-9 with less-than-truckload ratings ranging from class 55 to class 400. Many furniture manufacturers produce a number of furniture items with a great number of individual variations made according to special order. Frequently wholesale and retail department stores maintain low inventories, do not purchase furniture in truckloads, and may be situated at points apart from major distribution centers. Because of the discontinuance of railroad less-than-carload service and the increasing number of restrictions placed upon the services afforded by freight forwarders, furniture shippers have been relegated essentially to the exclusive use of motor common carriers for transportation to distant markets. However, few, if any, motor common carriers have the requisite authority or ability to provide a truly nationwide service, and the furniture industry frequently depends upon the establishment by motor common carriers of through routes, joint rates, and interchange agreements for the most efficient and economical means of distributing a large part of its goods.

The action taken by Associated is not unique. Because of the greater revenue derived from transportation of other traffic and the alleged undesirable transportation characteristics of furniture, many other carriers have taken action similar to that of Associated.[2] This Commission has expressed serious concern with this practice not only as it affects the movement of furniture [3] but also the general movement of small shipments.[4]

Legislative history and prior proceedings.—Prior to the enactment of part II of the Interstate Commerce Act in August 1935, the motor carrier industry was not subject to Federal regulation, and motor carriers were generally free to establish among themselves any arrangements that suited their individual interests. The Motor

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[2] See, for example, I. and S. Docket No. M-20023, *Furniture Restrictions by Associated Transport* (not printed), decided February 24, 1966; I. and S. Docket No. M-20285, *Furniture Restrictions, Pulaski Highway Express, Inc.* (not printed), decided July 18, 1966; and Docket No. 34804, *Joint Routes, Central and Southern States* (not printed), decided March 9, 1967. Also see the appendix hereto.

[3] See the Notice of Proposed Rulemaking and Order, Ex Parte No. MC-72, Motor Service on Shipments of New Furniture, dated July 11, 1968.

[4] See "Small Shipments Problem, Report of the Ad Hoc Committee of the Interstate Commerce Commission," November 30, 1967. In this regard, in the early part of 1967, the Commission began a program whereby the Bureau of Enforcement is empowered to intervene in "Investigation and Suspension" cases. Under this program a significant number of restrictive tariff provisions have been suspended by the Commission's Board of Suspension acting on its own motion, and in all such cases the respondents either voluntarily canceled the restrictive provisions in question or tacitly agreed to cancellation by not filing supporting statements. Still, the Commission, while suspending proposed cancellations of joint-rate arrangements, has not suspended, on its own motion, proposals for the complete closing of through routes. However, since the action of division 2, on February 15, 1968, in I. and S. Docket No. M-22071, suspending, upon protest, a proposed cancellation of joint rates, through routes, and interchange arrangements, about 32 similar restrictive proposals have been suspended upon the protest of interested persons.

Carrier Act of 1935, however, subjected for-hire motor carriers to economic regulation by this Commission and provided, as here pertinent, that common carriers of property by motor vehicle may establish reasonable through routes and joint rates with other such carriers. Specifically, section 216(c) of the act provides:

> Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers * * *. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

Section 216(c) was inserted in the Motor Carrier Act of 1935 at the behest of the small motor vehicle operators. The original proposal[5] for mandatory through routes and joint rates between motor common carriers of property was disapproved because "many of the small operators were afraid that if this were done it would give preference to the railroads, and therefore they were afraid to ask it." 79 Cong. Rec. 5655. The Commission has consistently taken the position that section 216(c) is permissive. The section authorizes, but does not require, the establishment of through routes and joint rates.[6] See: *Hausman Steel Co.* v. *Seaboard Freight Lines, Inc.*, 32

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[5] Section 216(a), as originally drafted, applied to all common carriers by motor vehicle and required the establishment of reasonable through routes. Subsequently, by amendment, this section was limited to passenger carriers only.

[6] The Commission has frequently proposed legislation to amend section 216(c) and (e) and thereby authorize the Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water.

M.C.C. 31; *Rayons Between Trunk Line and New England Territories*, 44 M.C.C. 280; *East South Joint Rates and Routes, Cancellation*, 44 M.C.C. 747; *Gulf, M. & N. R. Co. Common Carrier Application*, 18 M.C.C. 721; *Lubbock-El Paso Motor Frt. Inc., Com. Car. Application*, 27 M.C.C. 585; *Daniels* v. *Rose*, 43 M.C.C. 726; *Rocky Mt. Lines, Inc.—Elimination of Participation*, 31 M.C.C. 320; *Restrictions, Riss & Co., And Eliminations, Hi-Way Motor*, 46 M.C.C. 290; *Strickroot* v. *Detroit & C. Nav. Co.*, 253 I.C.C. 535; *Southeast Shippers Assn., Inc.*, v. *Akers Motor Lines, Inc.*, 54 M.C.C. 770; *Southeast Shippers Assn., Inc.*, v. *Atlanta, C., A. Motor Lines*, 63 M.C.C. 491; *Transport Storage & Distr. Co Ext.—Motor Vehicles*, 86 M.C.C. 549; *Closing of Express Stations in the Southwest and West*, 288 I.C.C. 185; *Freight, All Kinds, Chicago and Ind., Mich., Ohio*, 322 I.C.C. 423; and *Substituted Service—Piggyback*, 322 I.C.C. 301.

The examiner's and board's conclusions and findings.—Based upon the above interpretation of section 216(c), the examiner found that the assailed tariff restriction had not been shown to be unlawful and recommended that the complaint be dismissed. The examiner found complainant's contention, that the subject tariff restriction violated Associated's common carrier obligation, to be without merit.

The examiner further concluded that there was insufficient evidence to demonstrate conclusively that the challenged tariff rule is unjustly discriminatory, unduly prejudicial, or disadvantages furniture contrary to the provision of section 216(d). Citing the *Strickroot* and *East South Joint Rates* cases, *supra*, the examiner stated that "this Commission has no authority to require motor carriers to establish or to maintain through routes or joint rates unless it is shown that the cancellation of some of them and not others would create unjust discrimination, undue preference or prejudice, undue advantage or disadvantage, or otherwise be unlawful under the provisions of the act."

Subsequently, the board, by decision and order, affirmed and adopted the examiner's statement of facts, conclusions, and findings but with the following modification:

> Since the statutory provision regarding through routes and joint rates is permissive only, and not mandatory, the cancellation of such routes and rates would only be an unreasonable practice under section 216(b) if it was shown to be so by appropriate evidence. As stated, the defendant's reason for such cancellation on furniture was that its division of joint-line revenue did not cover its cost, considering the high incidence of damage on the particular traffic. The complainant's evidence here does not show the facts to be otherwise.

The instant proceeding is now before us on reconsideration.

CONTENTIONS OF THE PARTIES

On reconsideration, the Conference argues that the essential issue in this proceeding remains unresolved. Complainant maintains that once a motor common carrier of general commodities elects to establish through routes, that carrier is obligated under its certificate of public convenience and necessity to transport all commodities over those routes until the through routes are closed to all commodities. In support of its position, it emphasizes that on a direct haul, motor common carriers of general commodities are obligated to transport all commodities equally, without discrimination or partiality, over the routes and from and to the points enumerated in its certificate. The Conference reasons that this same duty must likewise prevail on joint hauls, unless there is some specific provision under the act which permits such a carrier to lessen or limit its obligation to haul general commodities. It alleges that section 216(c) has been misconstrued and that the assailed tariff restriction cannot qualify as a valid cancellation of "through routes," inasmuch as traffic other than furniture continues to move over these routes.

Associated notes that the assailed tariff rule is limited solely to the joint-through movement of furniture in only one rate territory and does not affect local single-line traffic or joint-line traffic in other rate territories. Asserting that it still holds itself out to transport furniture from and to the points it is authorized to serve and that, under either the terms of its certificate or the provisions of the act, it is not required to interchange or participate in through routes with other carriers, Associated contends that there is no evidence of its alleged failure to comply with its common carrier duties. Citing *Hausman, East South Joint Rates*, and *Southeast Shippers Association, supra*, Associated argues that this Commission lacks the power to prevent the closing of through routes, except where such action is discriminatory, and submits that the examiner's and the board's findings are correct.

Discussion and Conclusions

The primary reason advanced for the publication of the challenged tariff rule is that, considering the asserted high incidence of damage and other undesirable transportation characteristics of furniture, Associated has been unable to recover its costs from the present division of joint-line revenues on movements of these commodities. It had earlier sought to cancel only the joint-class rates applicable on the movement of furniture but failed to justify the resulting higher combination of local rates applicable over the still open through routes; similarly, its contention, that the proposal was justified by an unusual history of damage claims on furniture, was also rejected. See *Furniture Restrictions Between Central and Southern States, supra.*

By the instant publication, effectively canceling through routes as well as joint rates and interchange arrangements on the movemenut of all furniture, Associated has not only foreclosed the applicability of joint-class rates but also rendered unavailable its local rates on this com-

modity as factors of through combination rates over routes with other carriers. Thus, to effect movement of its products from a point served by Associated to a point served by another carrier, a furniture manufacturer would not only be required to pay a combination of two local rates (rather than a lower single-factor rate), but would also be put to the expense (and subjected to the attendant delay) of arranging to have a warehouseman or other person at the point of interchange act as his agent in accepting the shipment from Associated and forwarding it on a new bill of lading.

This selective action, in many situations, has the effect of restricting the movement of furniture to those territories where single-line service is available. The affected manufacturers of furniture thus are, to a greater extent, relegated to regional or territorial markets for the sale of their products and precluded from freely competing in other markets. Thus, the challenged tariff rule tends to precipitate a disjointed, segmented, and regionalized transportation system and permits Associated selectively to encourage the transportation of traffic which Associated believes to be more desirable and lucrative.

Statutory provisions.—This Commission's jurisdiction and power to regulate common carriers of property by motor vehicle and to establish reasonable requirements for the provision of continuous and adequate service by such carriers are found in several sections of the act. These sections must be administered and enforced with a view to carrying out the national transportation policy, wherein it is declared to be the policy of congress:

> To provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate economical; and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the es-

tablishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; * * *—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense.

Regulatory jurisdiction is vested in this Commission over the transportation of property by motor carriers engaged in interstate or foreign commerce and equally over the procurement and provision of facilities for such transportation under section 202(a) of the act. In the exercise of this jurisdiction, section 204(a)(1) of the act, delineates the duty of this Commission "to regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service * * *." Also, section 204(a)(6) requires us "to administer, execute, and enforce all provisions of this part [part II] and to make all necessary orders in connection therewith." Further, section 208(a) provides that "such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204(a)(1) and (6)," may be attached to the exercise of the privileges granted by the certificate issued under sections 206 and 207 of the act. This Commission, under the provision of section 212(a), may, after notice and hearing, suspend, change, or revoke a certificate in whole or in part for willful failure to comply with any provisions of this part or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate.

Section 217(a) of the act requires every common carrier by motor vehicle to file with this Commission tariffs showing all the rates and all services in connection

therewith for transportation of property in interstate commerce between points on its own route and between points on its own route and points on the route of any other such carrier, when a through route and a joint rate shall have been established. No change may be made in any rate or any rule, regulation, or practice affecting such rate or the value of service thereunder, specified in any effective tariff of a common carrier, except after proper notice and compliance with section 217(a). See section 217(c). In addition, this Commission has ample authority to require motor common carriers to observe reasonable practices in connection with their rates and services and to consider complaints alleging unreasonable practices in the publication of rates or the conduct of operations. See sections 204(c) and 216(b) of the act.

These provisions of the act are indicative of the comprehensive jurisdiction and broad powers of this Commission to regulate the transportation of property by motor common carriers engaged in interstate or foreign commerce; to establish reasonable requirements with respect to continuous and adequate service; to administer, execute, and enforce all provisions of part II; to make all necessary orders in connection therewith; to attach such terms and conditions to the exercise of the privilege granted by a certificate as are necessary to insure continuous and adequate service by the holders thereof; to compel compliance with the provisions of part II by certificated motor carriers; and to require motor common carriers to observe reasonable practices relating to the provision of adequate service. All of these provisions must be administered and enforced with a view to carrying out the national transportation policy and accordingly are designed to provide a completely integrated regulatory system over motor common carriers of property. This Commission has powers commensurate with the goal and limitations on such powers will not be inferred from nonspecific statutory language.

Considering the assailed restrictive tariff rule in this context, we think it follows that if such a rule is found to constitute an unreasonable practice contrary to the act and adverse to the public interest, this Commission has the requisite authority to order its cancellation.

Duties of Common Carriers.—Section 203(a)(14) defines the term "common carrier by motor vehicle" as any person which holds itself out to engage in the transportation by motor vehicle in interstate commerce of property or any class or classes thereof for compensation. The chief characteristic of motor common carriage is the holding out of service to the public. Section 216(b) specifically prescribes the duty of every common carrier of property by motor vehicle:

> [T]o provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

Each certificate of public convenience and necessity granted to a common carrier by motor vehicle is conditioned upon the holder's rendering reasonably continuous and adequate service to the public pursuant to the authority therein granted. These sections of the act embody the common law obligations of common carriers to carry all goods offered for transportation and to serve all shippers. They are obligated to accept and transport all freight offered to them in accordance with the provisions of their certificates, and this duty is, with limited exceptions, an absolute one. If the public is to be adequately protected, common carriers must be held strictly accountable for their performance. Motor common carriers are

engaged in what has always been regarded as the public's business, and must, to the best of their abilities, serve all who seek their service, and serve them equally and fairly.[7]

Associated holds authority from this Commission to transport general commodities. Such a broad grant of authority carries with it a broad responsibility to the public. Associated has a duty, both at common law and under the act, to provide adequate service to all shippers of general commodities, including furniture. This duty is equal with respect to all general commodities. One class of commodities or group of shippers may not be favored. The same quality of service must be available with respect to all general commodities.

The tariff rule under consideration here ends all through routes and joint rates on furniture, while at the same time, such arrangements remain in effect with respect to other commodities. Consequently, not only will furniture shippers be required to pay higher local rates over the routes of Associated, but also over those of any connecting common carrier participating in such a movement. In addition, furniture shippers will be precluded from using a through bill of lading and, therefore, must execute separate bills for each segment of the movement. Damage claims and routing will, likewise, be further complicated and increased to the point where it may be economically impossible for the affected furniture manufacturer to distribute its commodities in other than local markets accessible through single-line service. Moreover, misunderstandings between shipper and its customers on furniture tendered to or moved by Associated under its restrictive provisions can lead to the loss of shipper's business. The net effect of the restrictive tariff rule is to discourage shippers of furniture from utilizing the routes of Associated in the distribution of their goods.

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[7] See *Planters Nut & Chocolate Co.* v. *American Transfer Co.*, 31 M.C.C. 719, 721-722, 729.

The fundamental inequity of all this is emphasized, of course, by Associated's continued participation in through routes, joint rates, and interchange arrangements on other general commodities which it deems more desirable.

Thus, it is clear to us that Associated is holding itself out to provide a greater service with respect to other general commodities than it offers on furniture. Such a selective holding out serves to injure furniture shippers and, in our opinion, is contrary to the duty of Associated to observe reasonable practices under section 216(b) of the act, a duty which is not relieved by section 216(c) and one which we are bound to enforce under section 204(a)(6).

The only authority given to motor common carriers by section 216(c) of the act is to establish *reasonable* through route and joint rates, charges, and classifications with other such carriers. No unfettered license is given to pick and choose the through service which will be provided. There is nothing in the legislative history of section 216(c) which would confer freedom upon a common carrier to establish a scheme of through routes and joint rates which is selective as to a particular class of traffic and none of the leading cases stands for such a proposition.

Associated seeks to justify its action by the assertion that the revenue it receives from participating in through joint-line movements of furniture is insufficient. The short answer to this claim is that other remedies are available under other sections of the act. For example, in I. and S. Docket No. M-22323, *Increased Rates and Charges, Central and Southern Territories* (not printed), Associated, along with other carriers, is seeking general rate increases on all types of traffic. It should also be noted that the motor carriers, including defendant, increased the ratings and rates on many articles of furniture effective January 16, 1968. The increased ratings and rates were not suspended but were placed under investigation in No. 34922, *Classification Ratings on Furni-*

ture (not printed). Associated may not merely refuse to participate in joint movements of furniture, and, at the same time participate in such movements on other traffic. Moreover, even though other motor services, including the separately conducted services of defendant on uncrated shipments of furniture, are available to shippers of furniture, the availability of other services, while important, does not provide a proper defense for the action of Associated. We are here measuring the services of Associated on the movement of furniture in relation to its services on other general commodities. General freight carriers, such as defendant, are the primary specialists in the handling of less-than-truckload traffic. Furniture shippers, which need less-than-truckload services as much as or more than other shippers, should not be deprived of through general merchandise service merely because there are other specialized forms of transportation available for the movement of furniture.

This Commission has previously found that under section 216(c) it has no authority to require the establishment or maintenance of through routes and joint rates. However, as noted, there is nothing in our prior reports which prevents us from ending unreasonable practices of the kind found to exist here.[8]

Furthermore, Associated's selective holding out clearly places furniture in a disadvantaged position relative to other general commodities. We find such disadvantage to be undue and unreasonable, and hence, unlawful under section 216(d).

We desire to make it unmistakably clear that we are not attempting here to assert any jurisdiction to establish through routes, joint rates, and interchange arrangements between common carriers of property by motor which Congress has entrusted to the managerial discre-

[8] Also see, for example, *Burlington Truck Lines* v. *U.S.*, 371 U.S. 156, 166, 170 (1962).

tion of these carriers. However, we are vitally concerned with the actions of common carriers in relation to the reasonable exercise of the permissive provisions of section 216(c) and their obligations to the public under the terms of the act. Accordingly, we find that the selective cancellation of through route arrangements on specified classes of commodities herein will adversely affect the public interest and section 216(c) does not foreclose us from observing our plain duty to preclude this unreasonable practice.

Concurrently with the service upon the parties of our decision herein, the Commision's Board of Suspension should suspend, upon its own motion, even without shipper protest, future selective tariff filings similar to the one at hand. As to those tariff provisions already established and not the subject of an Investigation and/or Suspension proceeding, or a formal complaint of a shipper, we will initially endeavor to obtain the necessary reforms by working through our Section of Tariffs, our field staff, and the carriers either directly or indirectly through Carrier Service Committees and tariff publishing agents. The situation as it now exists with respect to furniture is not tolerable and it is hoped that carriers will quickly and favorably respond to the dictates of our decision herein without the need for further formal action.

Findings

We find that, in the circumstances herein, the assailed tariff rule, effectively closing the through routes and canceling the joint rates and interchange arrangements on shipments of furniture only, published on behalf of

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Our decision herein in no way lessens the overall need as we see it for through route-joint rate legislation. Our decision herein will curb the practice of extreme selectivity, but will fall short of the goal of placing a positive duty upon rail, water, and motor common carriers to provide coordinated through service.

Associated Truck Lines, Inc., is an unreasonable practice and, hence, unlawful.

We further find that the assailed tariff rule, published on behalf of Associated Truck Lines, Inc., unduly and unreasonably disadvantages shipments of furniture and, hence, is unlawful.

COMMISSIONER TUGGLE, concurring in part:

While I agree with the majority's finding that the assailed tariff rule is an unreasonable practice and, hence, unlawful in the circumstances present here, I do not agree with the emphasis placed on the fact that the iniquity of the rule lies in its withholding from one commodity a type of service which the defendant will continue to provide on all other general commodities. In my opinion, the issues posed in this proceeding are more simple than might be supposed from reading the report, and there are less complex reasons for striking down the assailed tariff rule than those given in the report.

Simply stated, the defendant has canceled its participation in all through routes, joint rates, or interchange arrangements on furniture moving between Central States territory and the South (1) while continuing to handle any furniture movements beteween those territories when it can perform the service without interlining, and (2) without canceling such participation on other interterritorial movements. In these circumstances, it seems to me, the rule may result in undue preference and prejudice in certain situations and therefore must be found to be unlawful. Two specific situations come to mind. First, insofar as there are any shippers in central and southern territory who require defendant's interline service to reach a market in those territories, those shippers are being subjected to undue prejudice so long as the defendant continues to offer its single-line service to any competing shippers of furniture who are

fortunate enough to be able to use the latter service. The instant report at page 9 (lines 21-26) has found that such situations exist. In such situations, it appears clear that the result of the assailed rule is to force one of two competing shippers out of a market and thereby cause advantage to its single-line competitor by eliminating some of the latter's competition. The other situation may arise where a shipper in central and southern territory requires defendant's interline service to reach a market in those territories and a competing furniture shipper in another territory who also requires the defendant's interline service to the same market will continue to have such service available. In this latter situation, the result is to offer in one territory a service not offered in another for shipments of furniture moving to the same destination. This, of course, would have the effect of prejudicing shippers between southern and central territories whenever they compete at points with shippers from other territories who need the defendant's interline service and have it available. Conversely, any shippers not in southern and central territories would be advantaged where they require the defendant's interline service to points in that territory and it is available to them. In both of the examples given above, it appears clear that the assailed rule results in a failure to provide equal treatment to competitive traffic and is for that reason unlawful under section 216(d) of the act.

Related to the above is the fact that section 216(b) of the act requires motor common carriers to provide, as here pertinent, adequate service for the transportation of property in interstate commerce and to establish just and reasonable regulations relating thereto. The assailed rule appears to result in the defendant's depriving some shippers of furniture of service adequate for their needs since, as noted, they will apparently be forced out of certain markets in the absence of interline service by the defendant.

If the defendant can establish that there is any justifiable basis for its not handling this interline traffic at the present level of compensation, it may choose to increase that compensation in some acceptable manner. For example, it might be appropriate to publish arbitraries to apply on furniture shipments which move at joint rates and through routes when the lading must be transloaded. Such publication, of course, would be subject to the investigation and suspension provisions of the act.

COMMISSIONER WALRATH, dissenting:

I would affirm the decision and order of Review Board No. 4. Salutary and praiseworthy though the attempt of the majority to justify the result reached may be, I question the validity of the legal premises underlying the justification. Despite reliance upon the national transportation policy and sections of the Interstate Commerce Act too numerous to list, the majority's main thrust is that nothing in the legislative history of section 216(c) confers freedom upon a motor common carrier to establish a scheme of through routes and joint rates which is selective as to a particular class of traffic.

In my view, the report finds a force in the language of section 216(c) which does not inhere in the permissive character of that section. A carrier may only be required to perform service within the scope of its certificate and its election to join with other carriers in providing through service at joint rates does not operate to extend this Commission's authority so as to dictate to the carrier and require the rendition of service beyond the scope of its certificate.

The report holds, in effect and as a matter of law, that if a motor carrier maintains through routes on some traffic, it must maintain through routes on all traffic. This is certainly not the rule under part I which specifically confers authority upon the Commission to require

through routes. Compare *Thompson* v. *United States*, 343 U.S. 549 (grain) and *Denver & R.G.W.R. Co.* v. *Union P.R. Co.*, 351 U.S. 321 (fruits, perishables and livestock). Thus, I consider it inconsistent and unlawful to prescribe a more strict rule under part II where no power resides in the Commission to require motor carriers to join in through routes and joint rates.

Corrective legislation is urgently needed, which the Commission has recommended to the preceding Congress. Without such specific authority, I cannot read into existing law the power to act in the situation here presented.

It is ordered, That the defendant named in the complaint, be, and it is hereby, notified and required to cancel the tariff rule found herein to be unlawful, on or before February 5, 1969, upon not less than 1 day's notice to this Commission and to the general public by filing and posting in the manner prescribed under section 217 of the Interstate Commerce Act.

It is further ordered, That the said defendant be, and it is hereby, notified and required to cease and desist, on or before February 5, 1969, and thereafter to abstain from publishing or maintaining the tariff rule found herein to be unlawful.

And it is further ordered, That this order shall remain in force until further order of the Commission.

By the Commission.

H. NEIL GARSON,
Secretary.

(SEAL)

APPENDIX

Restrictive Provisions on Furniture in Motor Common Carrier Tariffs

The restrictive provisions of Associated Truck Lines, Inc., first became effective May 1, 1966. They were established on that date in item 545-J of supplement 88 to Central & Southern Motor Freight Tariff Association (C&S-MFTA) class tariff 100-D, MF-I.C.C. No. 287. Effective May 15, 1968, tariff 100-D, MF-I.C.C. No. 287, was reissued as tariff 100-E, MF-I.C.C. 357, and in the latter issue the provisions under investigation are carried in item 565, which reads as follows:

ASSOCIATED TRUCK LINES, INC.

(a) * * *

(b) On Shipments of Furniture as described in Items 79000 through 83650 of NMFC, Associated Truck maintains no through routes, joint rates or interchange arrangements.

(c) * * *

There are nine other items in the current issue of the C&SMFTA tariff which publish, for nine other carriers, restrictive provisions identical to or substantially the same as those published in item 565 for account of Associated Truck Lines, Inc. [Those items are numbered 530, 610, 675, 770, 845, 880, 925, 1050 and 1570.]

Another restriction for a different carrier, item 670, reads in part:

* * * maintains no through routes, joint rates or interchange arrangements with any other carrier on shipments of Furniture, set up, as described in Items 79000 thru 83650 of NMFC.

There are 18 other items in the above-mentioned tariff which publish, for 18 other carriers, restrictive provisions

identical to or substantially the same as those published in item 670. [Those items are numbered 685, 795, 875, 890, 950-A, 955-B, 1115, 1150, 1315, 1330, 1420-A, 1425, 1455, 1475, 1485-A, 1515, 1555-A and 1575.]

Still, another restriction, item 835-A, reads in part:

* * * maintains no through routes, joint rates or interchange arrangements on shipments of Furniture or Furniture Parts, as described in Items 79000 thru 83650 of NMFC (See NOTE B). NOTE B—* * *

Not applicable on Metal Furniture.

Other restrictions are as follows:

The restriction in item 625 reads in part:

* * * maintains no through routes, joint rates or interchange arrangements on shipments of Furniture and or Furniture Stock, as described in Items 79000 through 83650 of NMFC, except when * * * is the originating carrier.

Item 1060 publishes substantially the same restrictive provisions for account of another carrier.

It has, in fact, become common practice in all territories for motor carriers to limit their handling of set up furniture to local (single-line) hauls.

Following are examples of restrictive provisions published in tariffs filed by Central States Motor Freight Bureau, Inc. (CSMFB), Middlewest Motor Freight Bureau (MMFB) and Eastern Central Motor Carriers Association, Inc. (ECMCA) for the accounts of carriers other than Associated Truck Lines, Inc.

CSMFB tariff 22-C, MF-I.C.C. No. 739, names class rates between points in central territory. Item 1582-E of supplement 251 thereto reads in part:

* * * maintains no through routes, joint rates or interchange arrangements when on shipments of Furniture,

S.U., as described in the National Motor Freight Classification.

MMFB tariff 2-C, MF-I.C.C. No. 517, names class rates between points in Middlewest territory. Item 366-J of supplement 51 thereto reads in part:

* * * maintains no through routes, joint rates or interchange arrangements on shipments of Furniture or Furniture Parts as described in Items 79000 through 83642 of NMFC.

ECMCA tariff 32-E, MF-I.C.C. No. A-276, names class rates between points in eastern territory and points in southwestern territory. Item 3760-D of supplement 100 thereto publishes restrictive provisions * * *, and reads in part:

Subject carrier maintains no through routes, joint rates or interchange arrangements on shipments of Furniture, S.U., as described in Items 79000 through 82700 of the NMFC.

APPENDIX C

ORDER

SERVICE DATE
JANUARY 25, 1968

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, Acting as an Appellate Division, held at its office in Washington, D.C., on the 17th day of January, 1968.

No. 34815

NATIONAL FURNITURE TRAFFIC CONFERENCE, INC.

v.

ASSOCIATED TRUCK LINES, INC.

Upon consideration of the record in the above-entitled proceeding, including a petition filed November 17, 1967, by complainant, National Furniture Traffic Conference, Inc., for reconsideration of the decision and order of the Commission, Review Board No. 4, decided October 10, 1967, and a reply thereto filed December 7, 1967, by the defendant, Associated Truck Lines, Inc.;

It is Ordered, That the petition be, and it is hereby, denied for the reason that sufficient grounds have not been presented to warrant granting the action sought.

By the Commission, Division 2, acting as an Appellate Division.

H. Neil Garson
H. NEIL GARSON
Secretary

(SEAL)

APPENDIX D

DECISION AND ORDER

SERVICE DATE
OCTOBER 17, 1967

At a Session of the INTERSTATE COMMERCE COMMISSION, Review Board Number 4, held at its office in Washington, D. C., on the 10th day of October, 1967.

No. 34815

NATIONAL FURNITURE TRAFFIC CONFERENCE, INC.

v.

ASSOCIATED TRUCK LINES, INC.

Upon consideration of the record in the above-entitled proceeding, including the recommended report and order of the hearing examiner, the exceptions filed by the complainant, and defendant's reply thereto; and

It appearing, That the exceptions, except as reflected in the modification below, do not show any material errors in the examiner's statement and evaluation of the facts, conclusions of law or findings, nor do they raise any material matters of fact or law not adequately considered and properly disposed of by the examiner in his report, and are not of such nature as to require the issuance of a report by Review Board Number 4 discussing the evidence submitted and arguments advanced by the parties in the light of such pleadings;

Wherefore, and good cause appearing therefor;

We find, That the evidence considered in the light of the exceptions does not warrant a result different from

that reached by the examiner and that the statement of facts, conclusions, and findings of the examiner, being proper and correct in all material respects, should be, and they are hereby, affirmed and adopted as our own, with the modification set forth in the next succeeding paragraph.

It is ordered, That the following addition be, and it is hereby made to the hearing examiner's report:

Insert the following as an addition to the paragraph ending at the top of Sheet 5:

> Since the statutory provision regarding through routes and joint rates is permissive only, and not mandatory, the cancellation of such routes and rates would only be an unreasonable practice under section 216(b) if it were shown to be so by appropriate evidence. As stated, the defendant's reason for such cancellation on furniture was that its division of joint-line revenue did not cover its cost, considering the high incidence of damage on the particular traffic. The complainant's evidence here does not show the facts to be otherwise.

It is further ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission, Review Board Number 4, Members Brown, Rock, and Downs.

/s/ H. Neil Garson
H. NEIL GARSON
Secretary

(SEAL)

APPENDIX E

INTERSTATE COMMERCE COMMISSION

Served July 27, 1967

No. 34815

NATIONAL FURNITURE TRAFFIC CONFERENCE, INC.

v.

ASSOCIATED TRUCK LINES, INC.

Decided

Tariff rule providing that defendant maintains no through routes, joint rates, or interchange agreements on shipments of furniture found not shown to be unlawful. Complaint dismissed.

John F. Bohman for complainant.

Elmer J. Maue for defendant.

REPORT AND ORDER RECOMMENDED BY OREN G. BARBER, HEARING EXAMINER

The evidence herein, by order of the Commission, was submitted upon modified procedure. Thereafter, the proceeding was assigned to the hearing examiner for the recommendation of an appropriate order thereon, accompanied by the reasons therefor.

The complainant is a voluntary association of manufacturers, wholesalers, and retailers of furniture. By

complaint filed February 5, 1967, the complainant alleges that Associated Truck Lines, Inc., the defendant, through its publishing agent, the Central and Southern Motor Freight Tariff Association, Inc., Agent, (Central & Southern), has published the following tariff provision [1] applicable on movements between the central states territory and the South which violates sections 212(a), 216(b), 216(c), and 216(d) of the Interstate Commerce Act:

> Associated Truck Lines, Inc., maintains no through routes, joint rates or interchange agreements on shipments of furniture as described in Items 79000 through 83650 of MFC.

The complainant asks the Commission to order cancellation of this tariff restriction so as to restore through routes and joint rates to movements of furniture. A tariff item like that above, published for the account of Associated Transport, Inc., but limited to shipments of furniture, set up, was permitted to become effective June 13, 1966. See *Furniture Restrictions by Associated Transport, Inc.*, (not printed) decided February 24, 1966. Complainant's request for suspension and investigation of the item at issue was denied.

The defendant moves to strike the complainant's reply statement as violative of rule 1.49 of the Commission's General Rules of Practice because it restates argument previously presented in the complainant's opening statement and does not rebut the defendant's evidence. This rule is designed to prohibit the introduction of new evidence in the reply which is not in rebuttal of the defendant's statement. It does not proscribe the rewording or restatement of argument in the reply. See *Petroleum*

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[1] This tariff provision, which became effective on July 2, 1966, is contained in paragraph (b) of item 545-K in Central & Southern class tariff supplement 95 to tariff 100-D, MF-ICC 287. According to the record, this is a reissue of an item which became effective on May 1, 1966.

Resin—Hayes Freight Lines, Inc., 66 M.C.C. 489, 490. The motion to strike is denied.

The contested tariff restriction effectively closes all through routes, cancels all joint rates on movements of furniture, and renders unavailable the local rates of the defendant on that commodity as factors of through combination rates over routes with other carriers. Compare *East South Joint Rates and Routes, Cancellation*, 44 M.C.C. 747, 752. The complainant contends that this tariff provision is not a bona fide cancellation of through routes and joint rates, but that it is a disguised attempt to embargo the movement of furniture over through routes and at joint rates which continue to remain available for other general commodities transported by the defendant. It, therefore, urges that this restriction is a violation of the defendant's common carrier obligation to provide service on all commodities it is authorized to carry and constitutes a modification of the defendant's certificate of public convenience and necessity without compliance with the procedures set forth in section 212 (a). The complainant reasons that once the defendant establishes through routes and joint rates, they must be made equally available to all traffic. For these same reasons, the complainant argues that this tariff provision constitutes an inherently unreasonable practice in violation of sections 216(b) and 216(c). Section 216(b) requires motor carriers to establish just and reasonable practices relating to rates and charges maintained. Section 216(c) provides that motor carriers of property may establish reasonable through routes and joint rates with other such carriers.

The complainant further argues that even if the defendant's tariff does constitute a proper cancellation of through routes and joint rates, it violates section 216(d) because it subjects furniture to unjust discrimination and undue prejudice or disadvantage. It alleges that many shippers and retailers of furniture have relied on the

defendant's interline services for many years and that the tariff restriction has seriously handicapped them in the marketing of that article. Furniture in less-than-truckload shipments has ratings ranging from class 55 to class 400. The complainant claims that other commodities, such as games and toys, not subject to this restriction have similar transportation characteristics and similar ratings.

The defendant published the assailed tariff restriction because the division of revenue it received on joint line shipments of furniture purportedly did not cover its cost for such movements, mainly due to the high incidence of damage claims on furniture. However, it still transports single line shipments of furniture and will continue to do so.

The examiner can see no merit in the complainant's contention that the involved tariff provision violates the defendant's common carrier obligation. The defendant still holds itself out to transport furniture at its local rates from and to points it is authorized to serve. It has in no way modified its certificate. The complainant erroneously equates through routes voluntarily established by the defendant with the routes specified in its certificate. The defendant's duty as a common carrier of general commodities is to carry all commodities over the routes and from and to the points enumerated in its certificate. It is not required under the terms of its certificate, or under the provisions of the act, to interchange with other carriers or to participate in through rates, and therefore, its refusal to do so does not violate its common carrier obligation.

The complainant's contention that the tariff restriction violates sections 216(b) and 216(c) are likewise untenable. It has cited no authority in support of its proposition that cancellation of through routes and joint rates on one, but not all, commodities is an unreasonable practice within the purview of section 216(b). Section 216

(c) merely provides that the through routes and joint rates which a motor carrier may establish must be reasonable. The issue raised here by complainant is not the reasonableness of through routes or joint rates now maintained by the defendant, but the reasonableness of the cancellation of them on only furniture. However, this section contains no language purporting to establish any standards governing the cancellation of such routes or rates.

There is insufficient evidence to establish that the assailed tariff provision unjustly discriminates against furniture, unduly prejudices it, or unduly operates to its disadvantage. The complainant's evidence in this record is confined to showing that furniture is the only commodity which the defendant has refused to move over through routes and under joint rates, and to unsubstantiated general statements that shippers of furniture have thereby been injured and that other commodities still moving under such routes and rates have similar ratings and transportation characteristics. It does not identify the commodity or commodities which are allegedly favored by the defendant's action, but only makes vague reference to games or toys which are claimed, but not shown, to have similar ratings. The allegation of unjust discrimination cannot be sustained in the absence of convincing evidence of a difference in treatment by the defendant of a like commodity or a like kind of traffic moving under substantially similar circumstances and conditions. See *Federal Enameling & Stamping Company* v. *Associated Transport, Inc.*, 314 I.C.C. 501, 502. It must also be shown that the alleged discrimination is a source of advantage to the preferred traffic and a detriment to the other traffic. See *Factory Tile, Inc.* v. *South Bend Freight Line, Inc.*, 304 I.C.C. 214, 216. As indicated, there is no definite showing of any specific damage or injury to shippers of furniture or of advantage to other traffic by reason of the tariff restriction complained of.

The evidence likewise does not establish that this tariff provision has created undue prejudice or disadvantage to furniture. To establish undue prejudice or disadvantage, it must not only be shown that furniture traffic has been accorded a different treatment than a like kind of traffic and that it has thereby been injured, but it must also be shown that it competes with the favored traffic. See *Institute of Scrap Iron & Steel, Inc.* v. *Akron, C. & Y. R.*, 316 I.C.C. 55, 67; *Federal Enameling & Stamping Company*, v. *Associated Transport, Inc., supra; Factory Tile, Inc.* v. *South Bend Freight Line, Inc., supra;* and *Arrangements—Avoca Carrier Corp. and Duplan Silk Corp.*, 4 M.C.C. 657, 677. The complainant does not even allege that furniture is in competition with any of the commodities not subject to the assailed tariff. There can, therefore, be no finding of undue prejudice or disadvantage. Accordingly, the examiner concludes that the assailed tariff provision has not been shown to violate section 216(d) in any respect.

As previously indicated, section 216(c) provides that motor carriers of property may establish through routes and joint rates. That section is permissive only and not mandatory. Therefore, this Commission has no authority to require motor carriers to establish or to continue to maintain through routes or joint rates unless it is shown that the cancellation of some of them and not others would create unjust discrimination, undue preference or prejudice, undue advantage or disadvantage, or otherwise be unlawful under provisions of the act. See *Strickroot* v. *Detroit & C. Nav. Co.*, 253 I.C.C. 535, 537; *East South Joint Rates and Routes, Cancellation, supra*, at pages 753-754.

The examiner finds that the defendant's assailed tariff restriction has not been shown to be unlawful.

Premises considered, it is the order of the Hearing Examiner that in the absence of a stay or postponement by the Commission or the timely filing of exceptions, the

effective date of this order shall be 30 days from the date of service thereof; and that the complaint be, and it is hereby, dismissed.

Dated at Washington, D. C. on this 18th day of July, 1967.

By the Commission, Oren G. Barber, Hearing Examiner.

H. NEIL GARSON
Secretary

(SEAL)

APPENDIX F

STATUTES INVOLVED

RATES, FARES, AND CHARGES OF COMMON CARRIERS BY MOTOR VEHICLE

SEC. 216 [*August 9, 1935, as amended June 29, 1938, September 18, 1940, and August 24, 1962.*] [*49 U. S. C. § 316.*]

* * * * *

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers. As used in this subsection, the term "common carriers by water" includes

water common carriers subject to the Shipping Act, 1916, as amended, or the Intercoastal Shipping Act of 1933, as amended (including persons who hold themselves out to transport goods by water but who do not own or operate vessels) engaged in the transportation of property in interstate or foreign commerce between Alaska or Hawaii on the one hand, and, on the other, the other States of the Union, and through routes and joint rates so established and all classifications, regulations, and practices in connection therewith shall be subject to the provisions of this chapter.

(d) All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate or foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.